

January 9, 1997

**Advisory Opinion 1996 - No. 15
Restaurant Assoc Event**

The Board has received a request for an advisory opinion from Rebecca Bogard, on behalf of the Washington Restaurant Association, the Washington State Hotel and Motel Association and the Washington Association of Convention and Visitors Bureaus. Ms. Bogard has waived confidentiality.

QUESTIONS

The organizations requesting the opinion have sponsored a biennial dinner event called the "Hospitality Gala." In 1994, the event included "a reception prior to the dinner, an orchestra playing music during dinner service, the presentation of some awards to members of the hospitality community, a video about the tourism industry which included pictures of the legislators, recognition of the legislators by the emcee and an act by a group from Washington State University. After completion of these activities there was dancing."

Following the background information (summarized above), the request asks the following specific questions:

1. Does the fact that the function is black tie have any relevance to determining if the function qualifies under RCW 42.52.150(2)(f)?
2. If there is a band or some type of musical ensemble playing music during the time when dinner is being served, does this affect the ability of the function to qualify?
3. If a video is shown which contains information about the hosting industries, does this affect the ability of the function to qualify?
4. If the video is narrated by someone who makes it both informative and entertaining, does this affect the ability of the function to qualify?
5. Is there any kind of act (e.g., the Washington State University ensemble) which could be included as part of the program and still have the function qualify?
6. If there is dancing to a live band after dinner is completed, does this affect the ability of the function to qualify?

OPINION

The dinner event would not be a violation of the State Ethics Act, provided that it consists of dinner and related, customary, incidental amenities, and does not include non-incidental entertainment aspects.

ANALYSIS

A. STATUTORY CONTEXT

RCW 42.52.150 prohibits gifts in excess of fifty dollars in a single calendar year. The value of the event in this request exceeds the fifty dollar limit.

The opinion request cites the exemption for "food and beverages consumed at hosted receptions . . ." (RCW 42.52.150(2)(f)). However, the event as described does not appear to fit the meaning of the term "hosted reception." The Board concurs with the Executive Ethics Board on this point, which has distinguished hosted receptions from "a sit-down meal where the guests are expected to sit down to eat." A formal dinner such as the Hospitality Gala is clearly a "meal" rather than a reception.

A further exemption from the general limit is provided by RCW 42.52.150(5): "a state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties." The Board finds that this provision more closely matches the nature of the event, and responds to the specific questions in that context.

B. SPECIFIC QUESTIONS

1. Does the fact that the function is black tie have any relevance to determining whether the function qualifies under RCW 42.52.150(2)(f)? Using subsection (5) rather than (2)(f), the answer is that the formality of attire does not *per se* affect whether a meal qualifies under the exemption.

2. If there is a band or some type of musical ensemble playing music during the time when dinner is being served, does this affect the ability of the function to qualify? The answer to this question will depend on the circumstances involved. In many cases background music can be considered part of the ambiance of the surroundings associated with the permissible provision of food and beverage, regardless of whether the music is live or recorded. In such cases, we would consider the background music to be related and incidental to the service of food and beverage. However, if the music is more in the nature of a concert or for the sole purpose of dancing rather than background dinner music, it would not fit the exemption.

3. If a video is shown which contains information about the hosting industries, does this affect the ability of the function to qualify? No, this would seem to support the relationship to the performance of official duties. In this case the official duties include obtaining a better understanding of the industry and its legislative needs and preferences.

4. If the video is narrated by someone who makes it both informative and entertaining, does this affect the ability of the function to qualify? No, this would not change the answer to number 3.

5. Is there any kind of act (e.g., the Washington State University ensemble) which could be included as part of the program and still have the function qualify? Generally such "acts" would be considered entertainment which falls outside the statutory exemption. It would only be permissible if it could be considered related and incidental of the type described in the answer to number 2.

6. If there is dancing to a live band after dinner is completed, does this affect the ability of the function to qualify? If some people dance to the background band described in number 2, that would not appear to go beyond the exemption. The band should not, however, become an entertainment item itself, which would be evidenced by factors like moving to a separate ballroom, or substantially changing the configuration of the dining room to create the feeling of a different function.

C. OTHER CONSIDERATIONS

The exemption requires that attendance at the meal be related to the "performance of official duties." Therefore, at least some of the discussion during the meal has to involve legislative business. Most large banquet settings would not meet this requirement, since they do not typically have the type of direct interaction contemplated by the exemption. In this case, however, it is the Board's understanding that the tables are arranged to ensure that local restaurant and tourism entrepreneurs are present at each table, with the expectation that their industry and legislative concerns will be discussed.

The exemption also requires that hosted meals be "on infrequent occasions." Since this event occurs only once every two years, it clearly meets that test. By way of guidance, the Board notes that "infrequent" may mean different things depending on the nature and cost of the meal. Once a month might be too often for expensive dinners in four-star restaurants, while once a month for breakfast in a coffee shop might still be considered "infrequent." Members and staff should exercise caution and good judgment in this regard.